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July 25, 2016

VIA US MAIL AND E-FILING

Mark Stone
Deputy Bureau Chief
Federal Communications Commission
Consumer & Governmental Affairs Bureau
445 12th Street, SW
Washington, DC 20554

**Re: Re: Notice of Ex Parte Presentation – In relation to Kohll's Pharmacy and
 Homecare Inc.'s Petition for Declaratory Relief and Waiver, FCC No. 02-278**

Dear Mr. Stone:

On Thursday, July 21, 2016, I spoke with you in relation to Kohll's petition that has been fully briefed. During our phone call, I discussed the following points:

- Kohll's Pharmacy is a family owned business that was founded in 1948.
- The facsimile which resulted in a lawsuit brought by Ballard Nursing was a one-time facsimile sent by Kohll's on March 3, 2010, in response to a season flu update sent to Kohll's by the CDC.¹
- The CDC periodically urged pharmacies such as Kohll's educate the public and businesses relative to the availability of flu shots.
- Kohll's has determined of the 4,142 single faxes were allegedly sent, 577 were sent to existing Kohll's customers that had an established business relationship with Kohll's
- The facsimile in question (copied onto this letter) contained opt-out language.
- Briefing for summary judgment in state court cause of action is nearly complete and Plaintiff in the underling action, Ballard Nursing, is seeking a \$6,200,000 class action based judgment based on treble damages (\$1,500 per facsimile).²

¹ Notably, the facsimile was issued during the 2009-2010 H1N1 pandemic.

² I am puzzled why Ballard Nursing is seeking treble damages (\$1,500) per facsimile. First, Kohll's only sent one facsimile to each business. Second, nobody complained about the facsimile other than Ballard Nursing. Third, the facts are far different than the common scenario where a business repeatedly calls or faxes a person after being told to stop. Treble damages might be appropriate under those facts but not under the facts involving the subject one-time transmission.

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●Notably, nobody (other than the Plaintiff Ballard Nursing) complained about the subject facsimile.

I am in the process of attempting to track down the information that the CDC sent to Kohll's. When I find the information, I will supplement the record.

Thank you very much for taking my call. If you have any questions, please contact me.

Very truly yours,

x James C. Vlahakis

James C. Vlahakis
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JCV:ran
Encls.

[the subject facsimile is on the following page]

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